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Sentence

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

11 CR 424 (NRB)

MAYER WEBER,

Defendant.

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New York, N.Y.
February 14, 2013
4:00 p.m.

Before:

HON. NAOMI REICE BUCHWALD,

District Judge

APPEARANCES

PREET BHARARA

United States Attorney for the
Southern District of New York
JAMES J. PASTORE, JR.
Assistant United States Attorney

HAFITZ NECHLIS & ROCCO

Attorneys for Defendant
SUSAN NECHLIS, ESQ.
NOAH SHELANSKI, ESQ.

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1 (Case called)

2 (In open court)

3 THE DEPUTY CLERK: United States v. Mayer Weber.
4 Counsel, please state your appearances for the record.

5 MR. PASTORE: Jim Pastore for the United States. Good
6 afternoon, your Honor.

7 MS. NECHLIS: Susan Nechlis and Noah Shelanski for
8 Mr. Weber, who is also present.

9 THE COURT: Let me begin as I always do to confirm
10 that I've actually received all the documents in connection
11 with the sentencing that I should have. First there's the
12 report of the probation office which bears a cover memo date to
13 me February 7, 2013. Then there is the sentencing submission
14 submitted by defense counsel which is accompanied by 130
15 letters on behalf of Mr. Weber and finally at my request I
16 received this morning the financial statement that Mr. Weber
17 had not provided to the probation department. Actually,
18 looking at this I do not see a CC to the United States
19 Attorney.

20 MS. NECHLIS: I think we sent it to probation. We
21 could certainly provide a copy.

22 THE COURT: Why don't, if you have an extra on you or
23 I can ask one of my clerks to make a copy.

24 MS. NECHLIS: I apologize.

25 THE COURT: All right. Let me give Mr. Pastore a few

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1 minutes to flip through it. While he does that let me just ask
2 are there any other documents I should have received in
3 connection with the sentencing?

4 MS. NECHLIS: No, your Honor.

5 THE COURT: Let me just confirm that you have received
6 the report of the probation department and had an opportunity
7 to review it with your client.

8 MS. NECHLIS: Yes, your Honor.

9 THE COURT: Do you have any objections to it?

10 MS. NECHLIS: No, your Honor.

11 MR. PASTORE: The government also does not have any
12 objections.

13 (Pause)

14 MR. PASTORE: Thank you. We've reviewed the financial
15 disclosure.

16 THE COURT: Thank you. I'd like to begin by asking
17 the government to detail for me the evidence against Mr. Weber.
18 Specifically, having sat through the trial of four other
19 defendants in this case I'm in a somewhat better position to
20 formulate the precise questions and specifically I would at
21 least like to know, and you can tell me what else you think is
22 important, I would like to know the number of applications that
23 were filed with Mr. Weber, a company of his being a sponsor. I
24 would also like to know what evidence there is relating to
25 calls from the Department of Labor to Mr. Weber's companies

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1 which would indicate contact between him and the Department of
2 Labor and also whatever information you can provide with
3 respect to how much money he earned from participating in this
4 fraud.

5 MR. PASTORE: Yes, your Honor. In preparing for
6 today's sentencing we looked not only at some of those
7 questions but also just tried to get a sense of where Mr. Weber
8 fit relative to the other defendants that your Honor has
9 already sentenced and that have also been sentenced by other
10 judges in related cases.

11 In terms of the number of applications, the total
12 potential universe, and I put it that way because unlike the
13 defendants who went to trial we did not do the same deep dive
14 on the applications that were associated with Mr. Weber's
15 companies, in other words, the call notes, for example. We
16 pulled those only for defendants that were going to trial. The
17 total possible number of applications associated with Mr. Weber
18 were 305, associated with 219 aliens. Now, because -- we do
19 not believe, and consistent with our plea agreement, we do not
20 believe he is accountable for that high of a number.
21 Obviously, as I mentioned, there was not as much done to vet
22 that number as compared to the defendants who went to trial.
23 So we reached a negotiated plea agreement here and the parties
24 agreed that there were between 25 -- there were at least 25 to
25 99 applications that Mr. Weber was responsible for and so --

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1 THE COURT: When you say -- I think you said there
2 were 305 applications, that was the maximum number associated
3 with how many aliens?

4 MR. PASTORE: 219. And I hesitate because when I say
5 the maximum and the total potential universe, as your Honor
6 heard from both cooperating witnesses sometimes companies
7 would, applications would be submitted and the sponsor would
8 not be fully informed of what was going on, they would
9 essentially sign off on generally what was going on, but they
10 weren't asked to sign each and every application. And so
11 ultimately in this case with respect to Mr. Weber we ultimately
12 determined that 25 to 99 was an appropriate number to hold him
13 accountable for, that there was no doubt and both parties
14 agreed and wouldn't contest that he was responsible for at
15 least between 25 and 99 applications. So a significant number.

16 But Mr. Weber's involvement went a little deeper than
17 that. There was a post office box that he opened to which
18 fraudulent applications and mail associated with fraudulent
19 applications was directed. And we know that he opened that
20 P.O. box because we have the rental application associated with
21 it. We also know that he controlled several businesses. Your
22 Honor heard and probably recalls testimony about nursing homes
23 that were used in the fraud. Indeed, as cooperating witness
24 David Greenstein testified, Mr. Weber and he engaged in
25 additional criminal conduct in the form of a company that

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1 Mr. Weber at least partially owned that was separate but
2 related to their law firm. Your Honor may remember that
3 Mr. Greenstein filed two additional fraudulent applications and
4 that was with Mr. Weber, with Mr. David. Now, of course
5 Mr. Weber at the time that those additional applications had
6 been filed, he had not yet been charged so this isn't
7 additional criminal conduct for him, this is part and parcel.
8 But I think that makes him differently situated than the other
9 defendants your Honor has seen in this case because he went on
10 to do other applications as part of the fraud, it's covered by
11 his plea agreement, but he did it essentially with David
12 Greenstein and with Earl David even after Earl David had left
13 for Canada.

14 And so what emerges is although he was a minor player
15 in the sense that he was not in the law firm, and we're
16 certainly not backing away from the minor role adjustment, we
17 gave it to him, he was not one of the law firm people and I
18 think that was sort of the dividing line. I also think the
19 guidelines in this case strike the government as reasonable.
20 As your Honor knows, the guidelines are 10 to 16 months and it
21 could be satisfied by supervised release that includes a
22 condition of home confinement as long as at least half of the
23 time is spent in prison, at least five months. And when you
24 look at the other defendants who have been sentenced, you look
25 at Mr. Flohr, for example, and the application numbers there,

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1 much lower, 40 applications was the total potential universe
2 for 30 aliens, and in fact there was a different guidelines
3 range, it was guidelines range where the offense level was 10,
4 which means that defendant Flohr was actually in zone B as
5 opposed to zone C. So it's sort of doubly significant in the
6 sense that it was a totally different guideline range and a
7 totally different zone, zone B instead of zone C, which as your
8 Honor knows can be satisfied by the guidelines by a term of no
9 imprisonment at all, instead home confinement alone is a
10 guideline sentence.

11 When you look at Mr. Walter, that's probably a person
12 that Mr. Weber is most closely associated with, but even there
13 there are differences. Mr. Walter was potentially responsible
14 for 198 applications associated with 163 aliens, but Mr. Walter
15 had a slightly different way into this fraud. He owed
16 Mr. Teitlebaum money. There was no evidence, at least that the
17 government was aware of, that the fraudulent applications were
18 going to P.O. boxes that he himself had opened. Instead, all
19 of the P.O. boxes that we identified associated with
20 Mr. Walter's companies were actually controlled by
21 Mr. Teitlebaum or others in the fraud and then we come to
22 Ms. Urbanek who actually was more involved. She was in the law
23 firm, as your Honor knows, but as your Honor heard and I won't
24 go into it in detail here, she had significant personal
25 circumstances, and in reading Mr. Weber's sentencing

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1 submission, I don't mean to suggest that he doesn't have a lot
2 of support, he clearly does, and there were an extraordinary
3 number of at least in my experience an extraordinary number of
4 exhibits and letters submitted on his behalf, but at the same
5 time it just did not strike the government -- as you know, the
6 government agreed to take the position at sentencing that a
7 below-guidelines sentence was appropriate for Ms. Urbanek
8 because of everything that happened including her domestic
9 situation, but we didn't feel compelled to do that here.

10 With respect to the other defendants that were
11 sentenced by some of the other judges in the courthouse,
12 Mr. Vago was sentenced at 366 days, so a year and a day. He
13 was a tax preparer and it makes sense. His guidelines are
14 higher and he played a more significant role and no one is
15 suggesting that 13 months' imprisonment here would necessarily
16 be the right term of imprisonment, although it's certainly
17 within the guidelines.

18 Mr. Nolan was the corrupt DOL employee, he got an
19 18-month sentence. Mr. Choudry got a 24-month sentence. Again
20 he was someone who worked at the law firm. Ms. Diaz, she was
21 an attorney, I think this was probably the outlier sentence and
22 she had personal circumstances including care of a minor child
23 as the sole provider, so I think that that is likely what drove
24 the decision to impose probation on her.

25 Ms. Sitao -- I'm sure I'm pronouncing that wrong --

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1 had a significant number of applications, approximately 34
2 applications, was sentenced to 15 months' imprisonment and then
3 Mr. Hussein and Mr. Saleem both provided various services.
4 Mr. Hussein worked at the law firm, Mr. Saleem was one of the
5 accountants, although he only did tax returns for a single
6 company which I think accounts for his probationary sentence,
7 whereas Mr. Hussein got a 13-month sentence as someone who
8 worked at the law firm.

9 So when you lay out and compare the relative roles of
10 Mr. Weber and the other defendants I mentioned the guidelines
11 particularly because they allow for a split sentence of home
12 confinement and some incarceration seem to be appropriate both
13 in terms of looking at them on their face and in terms of the
14 relative roles of the defendants here. I think probably the
15 most difficult thing, at least as I was looking at it, to
16 balance it is the level of charitable works that Mr. Weber has
17 done in his life, the number of supporting letters, the amount
18 of community support that he has certainly weighs in his favor
19 and perhaps that augers for not a full ten-month imprisonment
20 sentence and the split sentence being the appropriate sentence,
21 but certainly the government does believe that a guidelines
22 sentence here is appropriate, notwithstanding the charitable
23 works and taking that into account because of the several
24 things that Mr. Weber did, because of the not just lending his
25 name but opening P.O. boxes, the additional -- well, again, I

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1 don't mean to call it additional criminal conduct, it was
2 additional criminal conduct for Mr. Greenstein but part and
3 parcel of this was Mr. Weber was perfectly willing to continue
4 the fraud among the law firm.

5 THE COURT: And you have some independent evidence in
6 addition to Mr. Greenstein's testimony about, I think the
7 company was named something like Immigration Consultants.

8 MR. PASTORE: It was something along those lines,
9 North American Immigration Consultants, something along those
10 lines. May I have a moment to speak with Mr. Gibbs?

11 THE COURT: He can sit with you.

12 MR. PASTORE: He apologizes, he did not dress
13 appropriately.

14 So, your Honor, completely separate and apart from
15 the two aliens that Mr. Greenstein assisted along with
16 Mr. Weber the agents interviewed two different aliens who
17 reported meeting with Mr. Weber and apparently, and I say
18 apparently, it looks like money was taken from those aliens but
19 applications never were filed because we didn't find, the
20 agents didn't find any applications in the system. So the
21 aliens reported paying money but we didn't see a corresponding
22 Department of Labor immigration application. It's difficult to
23 prove a negative, but it appears that the money may have been
24 pocketed.

25 So in addition to Mr. Greenstein's testimony about his

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1 two aliens, the agents corroborated Mr. Weber doing additional
2 applications by talking to two people who actually were
3 serviced.

4 THE COURT: I'll hear from Ms. Nechlis now.

5 MS. NECHLIS: Thank you, your Honor. Your Honor, I'm
6 surprised by the government's statements here today.
7 Mr. Pastore was not involved in our negotiations with Ms. Perry
8 and Ms. Echenberg about this plea and there were extensive
9 negotiations, they went over many months. We discussed all
10 these allegations and we told the government that we disagreed
11 with them, that there was no money taken and we reached an
12 agreement with the government, we were going to plead guilty to
13 certain things and it would be a stipulation as to what the
14 conduct was. Notably the government did not respond to our
15 sentencing memo and did not put any of this in writing. So we
16 had gone through all of this, but this was never put before the
17 Court. We were never, we never briefed this to your Honor. So
18 to come in today --

19 THE COURT: Do you want an adjournment?

20 MS. NECHLIS: No, I don't, your Honor. I think that
21 these -- there was a reason why we reached the stipulation and
22 the government reached the stipulation that they stipulated to.
23 They stipulated to what the conduct was. So to at this point
24 be raising other conduct is really kind of surprising. And we
25 gave them our sentencing memorandum before we submitted it to

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1 the Court to make sure that we were aware there had been a
2 trial on this, that they had done an extensive investigation to
3 be sure that we were not saying something about the conduct
4 that the government found offensive. We e-mailed it to them
5 and we discussed it with them before we submitted it to the
6 Court. And none of this was raised before today.

7 So there's a couple of levels of this. One is the
8 number of people. Before we entered into these stipulations
9 with the government we had extensive discussions about the
10 number of applications. We showed the government that on many
11 of the applications that Mr. Weber supposedly signed his name
12 was spelled wrong. It had the wrong Social Security number.
13 There were so many inaccuracies. He never signed those
14 documents. His name was forged on them. It was based on this
15 back and forth. So, yes, there are many documents which listed
16 his name, but they clearly, he clearly was not actually
17 involved in those documents.

18 THE COURT: Well, one of the things that I've learned
19 by spending over three weeks at trial is that while that was
20 true in many of the cases, that the sponsors did not personally
21 sign the applications, nonetheless the correspondence from the
22 government in response to the applications had to go back to
23 the sponsor, and so you have, let's say, a situation where you
24 have this post office box, and whether or not Mr. Weber or some
25 other sponsor signed the application, there becomes an

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1 awareness from the fact that there then -- there's mail from
2 the Department of Labor, there are phone calls --

3 MS. NECHLIS: Judge, I want to be a hundred percent
4 clear here. We are not contesting in any way his
5 responsibility. He pled guilty and we've accepted
6 responsibility.

7 THE COURT: Well, it's very important --

8 MS. NECHLIS: But what I'm saying is there were a
9 number of post office boxes. Some of them went to him. The
10 ones he had actual businesses, he had actual nursing homes, he
11 had an employment agency. He opened post office boxes in
12 connection with those. He did. He opened those post office
13 boxes. Mail did go to him. He got some of this stuff. He
14 knew what was going on. He's not saying he wasn't involved or
15 he didn't do it. But we showed --

16 THE COURT: But there's a great --

17 MS. NECHLIS: We went through a lot of the specifics.
18 We spent a lot of time going through the documents and showed
19 after that, we showed the government that some of these
20 documents could never have gone to him, he didn't see. So,
21 yes, there were 300-something applications, but we agreed with
22 the government that the best estimate of what he personally was
23 responsible for was up to I believe it was to 99.

24 THE COURT: Well, that number, as you know and I know,
25 just comes from the guidelines book and there is, guidelines

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1 book or no guidelines book, an enormous difference from my
2 point of view, and I think there ought to be, whether the
3 number is 25 or it's 99 or it's really 150 or 125, but the
4 government as part of plea negotiations says we're going to put
5 you in another guidelines category. So, you know --

6 MR. PASTORE: Your Honor, I do want to be clear when I
7 was talking to my colleague Ms. Echenberg, there were, of those
8 199 that I mentioned there were some that Mr. Weber could not
9 have known about, so we credited defense counsel's arguments
10 and that's why we agreed on the 25 to 99, one of the reasons we
11 agreed on the 25 to 99 and no one is suggesting that --

12 THE COURT: No, I understood you.

13 MR. PASTORE: I just wanted to make that clear that
14 we're not backing away from that number. We heard what defense
15 counsel -- again, I wasn't involved in those negotiations, but
16 I understand that it was negotiated very hard that number and
17 there was a pretty convincing presentation made about why the
18 number should be lower for several reasons.

19 THE COURT: Okay, but from my perspective it does
20 matter whether it's at the low end or the high end of that
21 number and if you have a situation where the potential universe
22 is 305, there's a huge difference just in mathematical terms
23 whether the real number is a third or the real number is --
24 well, let me -- a twelfth and one would logically think it's
25 not a twelfth, it's something higher than that.

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1 MS. NECHLIS: Your Honor, if I may respectfully. I
2 think nobody was able to say where it was between the 25 and
3 the hundred, the 99; that clearly he got mail on this stuff, he
4 got documents. He received documents over the years. Some of
5 the documents went to his post office box. He appears to have
6 signed very few of the documents himself. But he did get the
7 mail. He knew that this was going on. He knew that his firm
8 was being -- his companies were being used on an ongoing basis
9 and he did nothing about it over time and then after he did
10 have some involvement with Immigration Associates. We went
11 back and forth with the government over this issue of whether
12 there were other immigrants he took money from. We disputed
13 that. We said we did not believe it ever occurred and the
14 government as we understood it dropped that out of any
15 consideration. That was not to be part of today.

16 THE COURT: Let me make something perfectly clear. On
17 the yellow piece of paper in front of me with my questions is
18 the following note: David G. for Greenstein, Immigration
19 Consultants. I was going to ask him whether he volunteered it
20 or not because we did something not very sophisticated but we
21 reviewed the trial transcript with an index to find all the
22 references to Mr. Weber. So we found it. So it wasn't that I
23 remembered it, frankly, but we found it.

24 MS. NECHLIS: As did I, your Honor. And there's no --
25 Immigration Associates, I understand. But what I'm surprised

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1 by today is the allegation about theft from other immigrants.
2 Not the two applications that were put in through Immigration
3 Associates but the allegation that money was stolen from other
4 people, which is something that we had extensive discussions
5 about with the government before this case and so that we would
6 want a hearing about it. We asked for the names of the people.
7 We disputed it. So to hear it now when they did not put it in
8 any memorandum, it was not part of the testimony, I'm frankly
9 surprised that it is coming up today, and it was not part of
10 the agreement, it was not part of the sentencing, it was
11 never -- it was something we always told the government, no,
12 that did not occur. That is not what occurs here.

13 THE COURT: But you don't dispute that Mr. Weber was
14 himself involved in some company, organization called
15 Immigration Consultants which had activities that were not
16 dissimilar from the scheme involving Earl David, right?

17 MS. NECHLIS: My understanding, your Honor, was that
18 there were two times that his firm was used as a sponsor at
19 that point as well. And that this fit well within the whole
20 sort of 25 to 99 for --

21 THE COURT: Was Immigration Consultants a sponsoring
22 company?

23 MS. NECHLIS: No.

24 THE COURT: It was a feeder company, right?

25 MS. NECHLIS: No.

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1 THE COURT: No?

2 MS. NECHLIS: My understanding about it was
3 Immigration Associates, one of the things that it did was you
4 were allowed under the regulations to bring, you're allowed to
5 assist people filling out applications and so that's what that
6 company, that was one of the roles it did. It also on a couple
7 of occasions my understanding is helped people with phony
8 applications where another one of Mr. Weber's companies was
9 used as the sponsor, and with respect to that, that was part of
10 the allocution in his case, that was part of the 25 to 99 cases
11 that the government had considered, that we had extensive
12 discussions about. He allocuted specifically to that as well.
13 That was part of our concern that that be covered in the
14 allocution here and it was agreed to that that was part of this
15 whole scheme, the same scheme, the 25 to 99 here. So this is
16 not, it's not some additional amount that went on. This was
17 part of the negotiations with the companies.

18 THE COURT: But isn't the more salient point that even
19 after Earl David fled to Canada, that did not totally
20 discourage Mr. Weber in continuing to be involved in this
21 fraudulent activity?

22 MR. PASTORE: Yes, and, your Honor, just to make the
23 record clear, although we've mentioned it, based on what I'm
24 hearing from defense counsel, we're not going to in any way
25 rely on the allegation of theft as a sentencing factor. The

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1 purpose of bringing the other immigration firm up was exactly
2 what your Honor just said. The salient point was that even
3 after Earl David leaves there's applications being filled out
4 by this company that it sounds like there's no dispute that
5 Mr. Weber was involved in that company and that additional
6 phony applications were filed through it. So we will
7 explicitly not rely on any allegation of theft to avoid any
8 problems.

9 THE COURT: Actually, the reason that I asked you the
10 question was there some independent evidence was to confirm or
11 be sure that what Mr. Greenstein had said was correct and
12 honest. So that was why I asked that. I can tell you that in
13 candor.

14 MS. NECHLIS: Your Honor, with respect to Mr. David's
15 fleeing, I do not believe that at that point -- it's a funny
16 thing. He flees, Mr. Weber knew he was doing something wrong.
17 He knew it before, he knew it after. He left. He was doing
18 something wrong by allowing his name. I don't think he focused
19 on the significance or how wrong this was. I guess that sort
20 of standing here today, I don't think that Mr. David fleeing,
21 it's not like the witness who had pled guilty and continued on,
22 was in a cooperation agreement and continued to do wrong. I
23 think of it all as just a continuum. It's not like we're
24 saying before he fled he didn't know he was doing something
25 wrong. He knew he was doing something wrong here, he should

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1 not have allowed his company to be used, his name to be used.
2 And he knew that even though he was only doing a portion others
3 were doing more and that this is what that law firm was doing.
4 Immigration Associates also did legitimate work, legitimate
5 help to try to get immigrants who were legitimate immigrants to
6 try to assist them in getting their papers in or their
7 applications put in. You don't need to be a lawyer to be able
8 to do this, to assist people in this kind of work. But he also
9 knew that he was doing something wrong with respect to being a
10 sponsor for these things. But in that sense I do not believe
11 that he is in any different position than the other sponsors or
12 defendants who have been sentenced by your Honor.

13 THE COURT: I can tell you that the, and I went back
14 over it because you made the argument, as did Mr. Herbst's
15 counsel, I did review all the other sentences and Mr. Pastore
16 may look at it from one perspective, but my perspective was
17 apart from the degree of involvement in kind of a measurable
18 way there were in my view certain family circumstances and
19 other situations that were particularly compelling to me. So I
20 assure you that I have, and I always try to sentence as
21 proportionately as possible. Whether it's perfect or not I
22 can't, you know, that I can't guarantee you.

23 Let me ask you about some other matters that I find
24 pretty troubling, and let me just put -- we can totally put to
25 one side the issue of whether Mr. Weber has engaged in

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1 exceptional charitable activity. I'm not questioning that.
2 But there are things that concern me. As you're aware,
3 paragraph 69 of the probation report states that the defendant
4 was instructed to complete and return a personal financial
5 affidavit to the Probation Office. To date we have not
6 received a personal affidavit from the defendant or defense
7 counsel and as you know I had my law clerk call you to obtain
8 that affidavit, which as I said earlier I got this morning.
9 It's dated yesterday. So it's not like you gave me a Xerox of
10 something that had been previously submitted.

11 The information in this affidavit, which I would not
12 have known had my eye not caught the absence of one given to
13 probation, makes the paragraph 69 information wholly misleading
14 and fundamentally bottom line untrue. For example, it says
15 that Mr. Weber had \$240 cash on hand. Well, I don't know,
16 maybe that was what was in his pocket at that moment, but if we
17 look at his net worth statement, and it's a tough Xerox so I
18 may not have the numbers quite right, but he has over \$2,500 in
19 bank accounts, he has brokerage accounts that sort of looks
20 like approaching \$50,000. He has cash value on life insurance
21 policies. He has other assets.

22 MS. NECHLIS: Your Honor, your Honor may not be aware,
23 the presentence report was given to us very late in this case,
24 so it was given to us on the, it was given to us I believe last
25 week and we went ahead with sentencing because I have a trial

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1 coming up and wanted to -- didn't want to adjourn this until
2 after sentencing. However, my colleague, Mr. Shelanski,
3 talking to the probation officer all along, he was busy on some
4 other things and had said, had been told we would submit this
5 report two or three weeks earlier and that we could put in the
6 financial affidavit afterwards. And then things got sped up
7 and we did not put the financial information in. The
8 presentence report was submitted and the --

9 THE COURT: But the whole thing is I've only caught
10 you in the falsehood because I asked for it and the fact is
11 that what he says in here is totally misleading.

12 MS. NECHLIS: All right.

13 THE COURT: And it's so grossly inaccurate and when
14 you go past that and then you learn that, you know, the
15 portrayal of somebody who --

16 MS. NECHLIS: Could I address what's in the financial
17 report and what's in the PSR? Because I'm troubled by this,
18 because I don't see it as that different.

19 THE COURT: Oh, he has \$240 cash on hand, but he has
20 four bank accounts, brokerage accounts, these are all what we
21 call, you know, cash or cash equivalents.

22 MS. NECHLIS: Okay. Your Honor, three of those
23 accounts are his wife's. They're not his. So when he answered
24 what was in his account, what he had, he was accurate. It
25 turns out his wife had about \$3,000 more, but he had \$250 in

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1 his account as of the date last night. So I don't think that
2 that's inaccurate.

3 With respect to his, the securities, one of those
4 accounts is his. The KEOGH, the \$30,000 one. The other two
5 which have about, I don't know, \$14,000 or \$13,000 are -- no,
6 one more is his, it has another 3,000 that he omitted to tell
7 probation, but the other 10,000 is his wife's, it's not his.

8 THE COURT: The question is, include all stocks --

9 MS. NECHLIS: He did.

10 THE COURT: -- and public companies you own or have an
11 interest in.

12 MS. NECHLIS: No, or your spouse owns.

13 THE COURT: Where does it say that?

14 MS. NECHLIS: If you look at the top it says, note,
15 you should put individual, joint or spouses.

16 THE COURT: Okay, I see it now.

17 MS. NECHLIS: On the front page the instructions say
18 not only your assets should be listed but also your spouse's
19 assets.

20 THE COURT: Fair enough.

21 MS. NECHLIS: In fact, his house is being foreclosed
22 on. He has no money. He has 30,000, the only money he'll be
23 left with --

24 THE COURT: But his house is being foreclosed on
25 because he chose to take out an enormous mortgage on his house

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1 and his house, according to this, is still worth more than the
2 mortgage amount that's outstanding.

3 MS. NECHLIS: You know, your Honor, we tried in this
4 financial statement to be really cautious. I was sort of taken
5 by surprise that this had not been given to probation. Things
6 had moved quickly. We tried to be very cautious and not
7 understate his assets in any way, in any way. Because to me
8 that would be the problem, to be coming in here and have put in
9 an affidavit that falsely understated it. It never occurred to
10 me that there was a question that it somehow contradicted what
11 he previously told probation. I don't think it significantly
12 contradicted it and certainly we weren't trying to hide any of
13 this. We put it all in the financial statement. I think to a
14 large extent it does reflect what was told to probation.
15 Really, his main assets is his 30,000 in an IRA account. His
16 wife has some other assets, there's a trust for the
17 grandchildren.

18 THE COURT: What is that trust? I wanted to ask you.

19 MS. NECHLIS: It's money he will inherit when his
20 father passes away. We tried to list everything, your Honor.
21 That is not money he has access to. That is money that he will
22 inherit, I'm not sure -- the grandchildren will inherit, not
23 him. So it's not money that he controls, but part of the
24 instructions here are, you know, people --

25 THE COURT: It's his daughter or all --

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1 MS. NECHLIS: His daughters. So we really tried to be
2 very -- I mean, I'm always concerned. I don't want my clients
3 making a false statement in these documents so I say overstate
4 if you have to your assets; if you're guessing, say, put it on
5 the high side, you know, but --

6 THE COURT: I also, I'll be perfectly candid with you.
7 There's a couple of your letters talk about the bar mitzvah
8 that he gave to the young man Mordechai, and it is described as
9 no expense or detail was spared. If my math is right that was
10 about four years ago?

11 MS. NECHLIS: Five years ago, your Honor.

12 THE COURT: 13, Mordechai says he's 17.

13 MS. NECHLIS: He's 18. I think he was 17 when he
14 wrote the letter. He's 18 now.

15 Your Honor, I just have two things to say about that.
16 I do want to talk further about Mordechai because I think that
17 goes to the heart of sort of the --

18 THE COURT: How about just throw in there when you
19 discuss it the fact that in 2009 after throwing this bash he
20 then filed for bankruptcy.

21 MS. NECHLIS: So, your Honor probably noticed as well
22 that Mr. Weber's father has been paying the tuition for
23 Mordechai for school for all of this year and his father is a
24 wealthy man and he paid my fees and has paid most of these
25 things. So he is the one who has been providing a lot of the

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1 support here. In addition -- and he's very close to Mordechai
2 as well. He has been supporting Mordechai. He has become part
3 of his family, so this is essentially his foster grandson who
4 is being bar mitzvahed in what is a very important thing about
5 this child. But in addition, I don't know whether your Honor
6 has been to any bar mitzvahs in this community. No expense
7 spared is not like an upper west side bar mitzvah. This is not
8 at the Plaza. These are in schul with, you know, lavish food
9 set out, but this is not dancing all night at some fancy hotel.
10 This is not \$100,000 bar mitzvah. That is not what impresses
11 in that community.

12 So when I read this, it did not even occur to me that
13 it was an expensive thing. I've been to beautiful weddings in
14 this community where it's all in schul. It's not -- everybody
15 is invited, there's plenty of food, but I can't imagine it
16 costs that much money. It doesn't cost what my friend's kids'
17 bat mitzvahs and bar mitzvahs cost because it's a different
18 community, a different thing is important. What's important is
19 on the day of his birthday, on his birthday is when the bar
20 mitzvah happens at 9:00 at night. Often it's only the men
21 there or maybe some other people, but it's not that you have it
22 Saturday afternoon in schul sometime near the birthday and then
23 you go -- so I actually had not asked, you know -- and then you
24 have a big party at night. That's not what happens here.

25 So I hadn't even asked about this so I can't tell you,

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1 your Honor, how much it costs because having been to these kind
2 of bar mitzvahs hearing that, they're not fancy. They're not
3 like our bar -- my kid's bat mitzvah is going to be, which I
4 will try to do modest, but it will probably cost three times
5 what his foster son's bar mitzvah costs because to them what is
6 important is praying for hours and the significance of this
7 child getting up on the bima and praying for hours.

8 So I read that as talking, what to me was the
9 significance was he got this kid the education, he put it all
10 together, he got him the clothing that was needed. But I don't
11 even know if there was dancing, I don't know if there was, what
12 there was. It's not --

13 THE COURT: I'm just reading what Mordechai's mother
14 said. "A year later when Mordechai turned 13 he took care of
15 his bar mitzvah celebration and no expense or detail was
16 spared. It is now five years later and everybody is still
17 ranting and raving about it."

18 MS. NECHLIS: I don't know what she meant.

19 THE COURT: I don't know what she meant, either.

20 MS. NECHLIS: I'm told it cost about \$4,000, your
21 Honor, the bar mitzvah. I don't know why she says everybody is
22 still ranting and raving. I'm really -- these are, a bar
23 mitzvah in this community is not a big dance affair, it's not
24 where the kids get brought in on elephants.

25 THE COURT: I think I understand that. I am just

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1 reading what is in a letter that you submitted and there is an
2 interesting to me sequence of reading the letter and then
3 thinking about the fact that Mr. Weber, who is obviously the
4 son of an extremely, very wealthy -- I don't want to say
5 "extremely" -- a very wealthy person, decides, chooses to file
6 for bankruptcy thereby taking advantage of the civil law and
7 not paying the civil debts that he accumulated.

8 MS. NECHLIS: I could address that, your Honor.
9 Mr. Weber had a number of nursing homes in Connecticut and some
10 other businesses, and the rates changed for reimbursement. He
11 floundered. He didn't do well. He's not a very good
12 businessman. And it failed and there were enormous debts
13 associated with that. And, yes, he then took advantage of the
14 laws that allowed him to file for bankruptcy and that's what he
15 did and he filed for bankruptcy.

16 THE COURT: There's a difference between business
17 bankruptcy and personal.

18 MS. NECHLIS: I think his business and personal were
19 intertwined. He had taken personal loans out to invest in the
20 business. He had tried to make these businesses succeed. He
21 failed at it. And so because -- at that point he filed for
22 bankruptcy for it. But I don't think there's any allegation
23 anywhere that he did something improper in that respect. And
24 in addition I don't think there's any allegation that he lives
25 an extravagant lifestyle or had done anything, hidden assets or

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1 had done anything phony.

2 I mean, in this entire net worth statement here there
3 just isn't that much there. Even when you count in his wife's
4 assets there's just, you know, it's another \$10,000 in cash.
5 You know, at the same time this is a man who has taken on
6 extraordinary responsibility for two other foster children,
7 bringing them into his life, greatly increasing his expenses in
8 what he's doing. Because it's an expensive lifestyle. It's
9 expensive to send these children to Yeshivas, to private
10 schools. You've read these letters that all of these children
11 got extensive psychological care, that the two children he took
12 in, they were children very much in need. But it's not, really
13 in all of this when I was putting together the letters and
14 putting all of this together, I never really focused on the
15 money, your Honor, because respectfully, he's poor. He has
16 almost nothing. He walks around with plastic bags with things.
17 I've never seen him dressed well.

18 THE COURT: But they're all the letters of all of the
19 things that he is providing to these charities, where is it
20 coming from?

21 MS. NECHLIS: Much of it is him going and doing things
22 there, helping, setting things up. Yes, some of it is him
23 giving money, but, and I don't know when that is from. Some of
24 it is him buying clothing for people in his community on the
25 holidays or stuff. I don't know that that is that much money

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1 to be putting out, you know. I mean, you see also in his
2 financial statements he gets money. He's supported by his
3 father for the most part. His father has helped him. Does he
4 give some of his money away? It is an enormously charitable
5 family. His father, who is wealthy, has also done unbelievable
6 charitable acts. He organized and established, he was the
7 founder of Hatzolah, the ambulance service that is worldwide
8 now that is a volunteer ambulance service and he gives millions
9 of dollars and has given millions of dollars to that and he
10 gives to other charities and that is sort of the model that
11 Mr. Weber has tried to live with, and so he does give money to
12 charity, he does do it, and, your Honor, honestly, I actually,
13 when I looked at this letter, it is a community that is, this
14 community is very much, part of it is to do these different
15 charitable acts, caring for the sick, caring for the dead.
16 You've seen it in other cases I'm sure. To me what is
17 different about this case and when I came into court tonight
18 and what I have been thinking about for days is what is done
19 with these children, the two children he fosters and the Ungers
20 who also wrote letters to you as well where they talked about,
21 people in the community talk about his bringing into his home,
22 he and his wife Panina bringing kids into his home who came
23 from extremely troubled homes, and particularly this woman,
24 there was a letter from Gitty Manson who talks about this
25 child, their childhood friend Raizi, who was just a mess. She

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1 came from a horrible family, an abusive family, she went to
2 live with grandparents who were Holocaust survivors, always a
3 problematic situation. Then she married an abusive alcoholic
4 man and then has this child who clearly has psychological
5 problems, ADD, anger management issues, the stealing things
6 from the community, is in trouble, nobody can do anything.
7 There are many organizations that are trying to help him with
8 this boy in the community, nobody would take him in. I can't
9 imagine as a mother trying to take in someone else's child like
10 this, taking on that kind of responsibility. But he and his
11 wife, Panina, who is here in the courtroom did that and have
12 done it not just this last year, not just for a few months, but
13 for years now, for over five years. I think it's six or seven
14 years with this boy. Before that they did it with another boy.
15 These boys have written to your Honor and other people have
16 written to your Honor about how he did that.

17 Those to me are just extraordinary acts and go far
18 deeper. Yes, he gave money to this kid, yes, but the amount of
19 time and devotion and caring and patience that you would have
20 to have with boys like this who are on the verge of just
21 becoming delinquents, just being drug addicts, thieves, being
22 in serious, serious trouble and there's just no question that
23 that was where Mordechai is. You have many, many letters from
24 that. So you see with all of that that that is really what I
25 think he has done here, you know, and then even more you see,

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1 and I didn't really focus on this before, but if you're going
2 back and looking through the letters there are these other two
3 boys who live next door, the Ungers, who also talk about how he
4 has taken them in. They have no father around either. It is a
5 community where sexes are very segregated and a boy needs a
6 father, a boy needs a man to help him get bar mitzvahed, help
7 him in a community like this. The rabbis will take care of
8 some of it in the community but Mr. Weber has stepped up to the
9 plate on this with these children and two others as well.

10 So with respect to Mordechai's bar mitzvah, I think it
11 occurred in 2008, before he declared bankruptcy, it's hard for
12 me to imagine a that it was a very lavish affair. Yes, I see
13 that that sentence is in Mordechai's mother letter. This is
14 the woman who is described by everybody else as being a little
15 crazy, a bit, you know, as being a troubled, troubled woman
16 which is why her child is not with her, why Mr. Weber and his
17 wife have been raising --

18 THE COURT: Explain to me why somebody who is the son
19 of a multimillionaire who engages in exceptional charitable
20 works, has a clear sense of family, of community, is willing to
21 break the civil law. The civil law, what I mean by that is
22 broadly the non-religious law, in this case the criminal part
23 of the law. It is -- there is a disconnect there that I really
24 don't comprehend.

25 MS. NECHLIS: So, I agree with that, your Honor, that

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1 is the most challenging part of this case. I do believe that
2 Mr. Weber is a really good person, a really good person who did
3 something wrong here. I think he did something wrong for a
4 couple of reasons, you know, having spent a long time with him,
5 with his family. I know a lot of his family members over the
6 years and with him I think that he's had a lot of health
7 issues, he had a tremendous failing in his business. He is not
8 the success of his father, of his brothers, maybe, he is not
9 the success. In other ways he is, in his personal life he is a
10 tremendous success in his business he is not, he is really kind
11 of a failure there. I think he was floundering, he was looking
12 for things to do, looking for business. He doesn't have a job,
13 he's a messenger essentially today. He is supported by his
14 father.

15 He became friends with some people at this law firm,
16 he started off working for them legitimately, they said to him
17 here's an easy way to get money, these are people who just need
18 to come into the country, it's no big deal. And it is a big
19 deal. I don't mean to say that, that it's not a big deal. It
20 is a big deal, it was wrong to do it. But I think he
21 disregarded how wrong it was. He didn't think of it as a big
22 deal. He's not stealing money, he's just helping people come
23 into the country. And I think he just did something stupid, he
24 didn't think of it as that significant and he did something
25 stupid, maybe because he was in a very hard part of his life, a

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1 bad time in his life, maybe because he's not the success of
2 other people, maybe because he's having health problems and
3 problems that we talk about in his submission, in our
4 submission to your Honor, but there is often no good reason why
5 somebody does something that was just wrong and
6 uncharacteristic.

7 It is not, what I would say, though, it is not a
8 situation, sometimes you'll get a situation where it's
9 pervasive in someone's lifestyle that they are on the one hand
10 religious, but on the other hand they're defrauding the
11 government out of benefits. They're not paying their taxes.
12 They're doing this -- that's not what went on here at all.
13 This is a man who I believe has led a righteous life, who
14 thinks, who is not a cheat or dishonest person, but who did
15 this thing and it was wrong. It went on.

16 I don't think he made a lot of money out of it.
17 Somehow the government was alleging he got \$100 a transaction.
18 He didn't have a lot of money. He's not a success and I think
19 he was trying to find a new way, maybe I can do this
20 immigration business, maybe I can start that as a business. In
21 fact, at one point he was asking me is this okay, can we do
22 this, can I help people with this, here are the regulations.
23 He has no place to -- he was lost, and so none of that is meant
24 to justify it, to say that this was in any way okay, but it was
25 just I feel a failing.

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1 MR. PASTORE: Judge, just very briefly. In terms of,
2 so defense counsel has raised this idea of paying taxes. I'm
3 just looking at paragraph 70 and it doesn't appear that he's
4 paid any taxes from 2007 to 2011, since his taxable income is
5 zero. I'm not sure how that is if he was employed earning \$400
6 a week during that time period. And it looks like maybe
7 negative income was reported for 2007 and 2008. I don't know
8 if the parenthesis indicate negative income or not. The tax on
9 the return for one year in 2007 is \$1,266, the taxable income
10 is zero. Taxable income is zero in each of those years. I'm
11 not really sure of what's going on there but I raise it only
12 because the tax issue was brought up.

13 Second, with respect to the mortgage, it looks like
14 essentially equity was stripped out of the home and then it was
15 allowed to go into foreclosure. The purchase price of the
16 home, if you look at --

17 THE COURT: I'm very familiar with that part. Yes,
18 the purchase price is around --

19 MR. PASTORE: 255, but then you have a mortgage in
20 excess or close to a half million dollars and then on the other
21 page it looks like there's a home equity line of credit and I'm
22 not, I have no idea what was in that loan application. I know
23 from my experience in the white collar unit that equity
24 stripping is something that folks do to get money when they
25 don't intend to pay it back. I have no --

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1 THE COURT: Well, I mean --

2 MS. NECHLIS: Judge, I don't know why Mr. Pastore
3 would have just said that with no knowledge of it. Yes, that
4 happens. That has no applicability here. This money, my
5 understanding, was taken out a number of years ago to help fund
6 his businesses. That's what I was saying before, that his
7 personal, he took money to try to save his business, to try to
8 make his businesses -- people often do that in small
9 businesses. It wasn't a stripping recently of money taken out.
10 And in fact, I don't even know that you could get a home equity
11 loan today, that he could get a home equity loan in the last
12 three years.

13 When I say he has always paid his taxes and is not a
14 tax cheat, he doesn't make enough money to pay taxes at the end
15 of the year, but he's declaring his income and just as there's
16 this whole debate about what it means to not pay -- he's paying
17 taxes. He's paying taxes on his income. He's paying his
18 Social Security tax. He is not earning money. His income is
19 very low, so he's not paying a tax rate that's high, but he's
20 paying taxes and he's not illegally declaring -- that's my only
21 point here. It's not a case where somebody is coming in, I
22 kind of find it shocking that prosecutor comes in here and says
23 he's not paying his taxes. He's being investigated, there's
24 allegations. He hasn't done anything else wrong. To come in
25 and say well, maybe this is stripping, to have these kind of

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1 allegations thrown up like this at sentencing with no basis and
2 the prosecutor then says, well, I don't have any basis for
3 saying, then don't say it. Don't say it. It's wrong. We're
4 sentencing a man here today, and to suggest that maybe --

5 THE COURT: Let me say that had you put your financial
6 affidavit in timely I think it would have been a lot, this
7 presentence report would have reflected the numbers that
8 finally appear because I asked for it.

9 MS. NECHLIS: I understand, but can I say, the
10 government knew about this bankruptcy, they knew about it. We
11 discussed it with the government when we were negotiating the
12 plea.

13 THE COURT: That may be.

14 MS. NECHLIS: No, I understand your Honor didn't, but
15 the prosecutors did. I never heard any allegation that there
16 was any fraud or anything wrong. There wasn't anything wrong.
17 Your Honor, I think that, I do believe that Mr. Weber is an
18 extraordinary man. I think that to have saved these two
19 children's lives and also the Unger boys, taken them in, is the
20 kind of conduct that you almost never see somebody do. When we
21 talk about, when people think about adopting a child or taking
22 a child in for foster care, it's a very hard thing to do. As
23 parents we all know that. We know how hard it is to raise our
24 own children with their own problems, but to take in someone
25 else's problem child and children like this who everybody knows

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1 are problem children, these are the kids that never get placed.
2 And for him to have taken in, it is really just extraordinary.

3 I think he is an extraordinary man who did something
4 wrong here, and more than that, your Honor, I think that when
5 your Honor talked about home circumstances and circumstances
6 that -- extraordinary home circumstances that I believe is what
7 the PSR was addressing, what they specifically talk about there
8 as to why probation is the right sentence in this case. You
9 have letters from Mordechai's, from his doctor who has written
10 to your Honor and told your Honor that this is a boy who is at
11 risk still, even though he is now 18 years old. He is at risk.
12 His school, his principal has written from the Yeshiva to talk
13 about here is a boy who is at risk. Others have written about
14 how Mordechai is still very much a boy who does not, a juvenile
15 who is behind on things and has been acting out, is under a lot
16 of stress. He's not here today because he -- because there was
17 a worry in the family that what would happen to this boy if he
18 comes here today and this kind of stress of him actually seeing
19 what was going on here. He knows about it, but to actually be
20 put in this situation. But it's not his doctor, it's a
21 guidance counselor who has written your Honor, I think it was
22 Exhibit 5, from Mordechai Landau who gave your Honor his phone
23 number and has talked about how he has worked with this boy as
24 he's grown into a teenager and he says that, "I've worked with
25 this child as he's grown into a teenager. Mayer Weber and his

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1 wife has raised them on his own paying for his schools." As
2 you know from other letters that was paid for by Mr. Weber's
3 father, as well as all the other services that this child
4 needs. Now, "Not having Mr. Weber around as his father would
5 cause irreparable damage to Mordechai. Mordechai is deeply
6 attached to Mr. Weber who he accepts as his father."

7 Mordechai writes in his letter to your Honor as well
8 about just how important this family relationship is and how he
9 doesn't talk about all the horrible things that happened to him
10 in the way that Getty has written to your Honor, about how he
11 would be beaten, how he would be walking his father home drunk
12 on the streets on shabbot, how other people would see it, how
13 he started stealing so he could hang out in a store hoping to
14 see his father in a store after his father deserted the family.
15 But he does talk about no one who was home to feed him, to
16 bathe him, to do anything for him, and then he found the Webers
17 who took him in and brought him up, and how in all the things
18 that they have done for him, and he says I need this man in my
19 life. He is a boy who, he's 18 now, but 18 is still young. I
20 mean, it's not so young in that community but he's young enough
21 so that they're not looking to get married yet. Some think
22 that in that community they marry very young, but there's been
23 no thought of trying to place this boy in that situation
24 because he's really just not together enough. He needs
25 Mr. Weber and it really has been extraordinary what Mr. Weber

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1 has done here.

2 We recognize the wrongdoing that Mr. Weber did. He
3 made very little money from this wrongdoing, which, of course,
4 doesn't really capture the significance of what he did wrong.
5 That's why that was not part of our argument, but it wasn't a
6 crime of greed, it was really a crime of stupidity and we ask
7 that your Honor sentence him to probation, to a period of
8 probation and if you see fit community service as well, but I
9 do believe that this is a indication as strong as any I've ever
10 seen of extraordinary family circumstances.

11 THE COURT: Mr. Weber, we've been talking a lot about
12 you, and this is your chance to speak on your own behalf.

13 THE DEFENDANT: I'm deeply sorry what I did, you heard
14 everything, you saw all the letters, you saw everything. I'm
15 deeply sorry what I did, I messed up.

16 THE COURT: Can you explain to me why you did what you
17 did?

18 THE DEFENDANT: I was in -- I had two nursing homes in
19 Connecticut and I bought them, I raised my own money, I
20 refinanced my house then. That's exactly the date when I
21 refinanced it was in 2002. That's when I bought the nursing
22 homes. I lost over \$2 million my own money. Nobody helped me
23 with that. I had -- my dad helped me and when I lost money,
24 he's helping me throughout just to pay my bills now. Further
25 on, I had a problem why I filed for bankruptcy. I had a major

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1 problem. I paid the mortgages for several years, until 2001
2 both mortgages, I paid it every month. I filed for bankruptcy
3 in '09. I had with the IRS settlement, I owed them money, I
4 paid them \$109,000, your Honor. I'm not a scapegoat, I paid.
5 I have an agreement, I paid it. I have copies of a certified
6 check and I paid the IRS up and I have a satisfaction note from
7 them. I'm not a -- I filed every year my taxes. The
8 government has a copy of my tax return. I'm not a crook. This
9 is what I earn.

10 Now, to your main question why I did this, it's
11 exactly what my attorney says that's the truth. I've been
12 struggling, I'm trying to make a go, something out of it, not
13 to sit around being depressed, to make a go of something since
14 I lost my literally life savings and my hope since I had these
15 two nursing homes. And again, I'm sorry. I messed up.

16 THE COURT: All right. We're just going to take a
17 brief break.

18 (Recess).

19 MS. NECHLIS: Your Honor, if I could just make one
20 more statement?

21 THE COURT: Sure.

22 MS. NECHLIS: I'm concerned because I feel that it was
23 my firm's fault that this financial statement was not submitted
24 in a timely matter. My understanding, I was on trial in
25 another matter and my understanding that the documents

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1 underlying it were given to probation but we hadn't filled out
2 the form and we didn't tell the client afterwards, he had asked
3 us is there anything else he needed to do. I'm told that he
4 was told no, there was nothing else, and it wasn't until a
5 couple of days ago that we focused on the fact that we had not
6 submitted this financial statement. So I would like to take
7 responsibility for that, your Honor, and to let you know that
8 as you're inquiring about it I am told that it was my firm's
9 fault that this was not submitted before. We didn't think it
10 was an issue. If we thought it was an issue we would have
11 asked for more time for sentencing so everybody could be
12 comfortable.

13 THE COURT: Let me say the reason it's an issue -- I'm
14 not -- I think that many of the questions I have about it have
15 essentially been satisfied. I had an experience in connection
16 with another sentencing some years ago where after I sentenced
17 the defendant, fortuitously we did a Google search to see,
18 looking to see what the coverage was of the sentencing, which
19 revealed that the defendant indeed had an outstanding judgment
20 to the SEC in a huge amount of money and I couldn't understand
21 how that was a piece of information that I hadn't known. So
22 when I contacted the probation department and asked and said
23 don't you -- where's this guy's financial statement, don't you
24 ask about these things, it turned out that it had been
25 flippantly, deliberately flippantly not filled out completely

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1 and as a consequence you may notice, you may be aware because
2 you've been practicing a long time, it now requires the
3 defendant to initial every page. That is a consequence of my
4 experience. So therefore, when I saw that no financial
5 affidavit had been filed, and there's some other financial
6 issues with the next defendant, it set off bells for me, okay?
7 And that's why I look for it.

8 MS. NECHLIS: I understand.

9 THE COURT: And then I admit that I didn't fully
10 accurately read it, which then caused me to have concern that
11 it was quite inconsistent with what had been disclosed which
12 was, of course, the experience I had had some years ago.

13 MS. NECHLIS: I would just ask that if your Honor has
14 any further concerns, because it was my fault, that we just
15 have an adjournment so I could address anything that your Honor
16 is concerned with.

17 THE COURT: Fine. I really don't think so. I think
18 you've cleared up the bankruptcy timing issue. I think you
19 cleared up the statement of assets in paragraph 69. I think
20 you cleared up the million dollar trust issue. That was just
21 something that I was curious about, and I think you also
22 cleared up any concerns that might have lurked about tax
23 returns. Okay. All right.

24 Obviously, any time that one spends close to two hours
25 I think now on a sentence indicates that it is a difficult one.

D2EFWEBS

Sentence

1 As I said earlier, I endeavor not only to explore carefully the
2 circumstances of the individual performing but also the
3 circumstances of other people in the same case. I think that
4 as we've discussed, there isn't any question that Mr. Weber
5 presents with extraordinary charitable deeds, actually not too
6 unlike a lot of the other defendants that have been sentenced
7 here, including taking a child into the home, one of the other
8 defendant's similar situation. And certainly Mr. Weber is
9 entitled to consideration for that, and all of those deeds.
10 Nonetheless, his involvement went on for a long time. He
11 admitted to seven years and a good number of applications,
12 although I can't pin them down, the opening of the post office
13 box and also his involvement with Immigration Consultants. It
14 all leads to a decision that he should be placed on home
15 confinement for three months.

16 Now, what I am uncertain about is whether that should
17 be a condition of supervised release or a condition of
18 probation. So I need a little guidance from counsel. I'm not
19 sure -- I know how to structure it as a condition of supervised
20 release, I'm not totally certain whether I can do it as a
21 condition of probation. It is not material to me.

22 MS. NECHLIS: I don't think it's material to me either
23 but I think that, I thought supervised release only follows
24 incarceration.

25 THE COURT: Well, it could be time served. It could

D2EFWEBS

Sentence

1 always be time served, but the question is if I want to have
2 the condition be home confinement can home confinement be a
3 condition of probation or does it have to be a condition of
4 supervised release.

5 MS. NECHLIS: Your Honor, I am embarrassed to say I
6 cannot give a definitive answer. I thought it could be a
7 condition of probation, but I'm not positive.

8 MR. PASTORE: Judge, I believe it can be a condition
9 of probation, in this case probation while authorized by
10 statute is not within guidelines, so it may just be easier, to
11 the extent it matters to the Court, to do a sentence of time
12 served with a special condition of supervised release -- I'm
13 sorry, followed by supervised release with a special condition
14 of three months' home confinement.

15 MS. NECHLIS: Judge, I really hate to do this, but
16 does it make sense to adjourn this to consult with probation,
17 the probation department as to what they, how they would like
18 to do it? My only concern is that if it's supervised release
19 is it, does it have to go through the prison system, does
20 someone else have to supervise? How will it work?

21 THE COURT: No.

22 MR. PASTORE: No, it's just -- I'm just looking at the
23 guidelines, by the way, your Honor, and guideline Section 5B1.1
24 does consider that imposition of a term of probation can
25 include a special condition requiring intermittent confinement,

D2EFWEBS

Sentence

1 community confinement or home detention.

2 MS. NECHLIS: So we would ask for that, your Honor.

3 THE COURT: Okay, that's fine. All right. So I'm
4 going to place Mr. Weber on probation for 18 months with the
5 special condition of home confinement for three months.
6 There's a special assessment of \$100. The mandatory and
7 standard conditions are imposed, and I'm not going to impose
8 the community service condition because I really think it's
9 unnecessary since I assumed he would continue to do what he
10 does.

11 He may leave home to go to work. And I will also, he
12 may also leave for religious services, but I would need you to
13 send me a letter perhaps tomorrow or the next day. Tomorrow
14 would be -- well, I may not sign the J and C for a while
15 because I'm not going to be here next week, so it doesn't
16 matter when you get it to me. I would like to have a specific
17 request so I could respond to that.

18 MS. NECHLIS: And I would assume that that would start
19 promptly so I wouldn't have to include the fall holidays, I
20 would just assume that it will be starting promptly so I'll
21 take whatever holidays are now into account and not the fall.

22 THE COURT: Certainly. I don't recall, but I assume
23 that you waived any right to appeal.

24 Is there anything else? Are there any open counts?

25 MR. PASTORE: The government moves to dismiss any open

D2EFWEBS

Sentence

1 counts and underlying indictments against this defendant.

2 THE COURT: All right. Thank you.

3 MS. NECHLIS: Thank you, your Honor. Thank you for
4 your consideration.

5 THE DEFENDANT: Thank you, your Honor.

6 (Adjourned)